

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

685

KA 16-00329

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL MAIER, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Monroe County Court (James J. Piampiano, J.), entered January 19, 2016. The order determined that defendant is a level two risk pursuant to the Sex Offender Registration Act.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Defendant appeals from an order determining that he is a level two risk pursuant to the Sex Offender Registration Act (Correction Law § 168 *et seq.*). The Board of Examiners of Sex Offenders (Board) determined that defendant was a level one risk with a total risk factor score of 30, but it further determined that there were aggravating circumstances of a kind or to a degree not taken into account by the risk assessment guidelines, and the Board thus recommended an upward departure to a level two risk. Following a hearing, County Court recalculated defendant's presumptive risk level by assigning points under risk factor 3 (three or more victims) and 7 (relationship between offender and victims, *i.e.*, strangers), resulting in a total risk factor score of 80, which is a level two risk.

We reject defendant's contention that the court erred in denying his request for a downward departure to a risk level one. Defendant failed to meet his initial burden of identifying and establishing mitigating factors that are not adequately taken into account by the risk assessment guidelines (*see People v Cooper*, 141 AD3d 710, 710-711, *lv denied* 28 NY3d 908).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court